



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/00789/2013
OA/00801/2013
OA/00806/2013

THE IMMIGRATION ACTS

Heard at Field House

On 24 June 2014

Determination

Promulgated

On 7th July 2014

Before

**THE HONOURABLE MR JUSTICE HADDON-CAVE
UPPER TRIBUNAL JUDGE CLIVE LANE**

Between

BK

RA

FA

(ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellants: Mr M Iqbal, Counsel

For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. An anonymity order applies to this case. The appellants will be called BK, RA and FA. They appeal against a decision of the First-tier Tribunal Judge Widdup dated 9 January 2014 in which he dismissed their appeals against

the Entry Clearance Officer in Dhaka's refusal of their applications to enter the United Kingdom on 22 October 2012.

2. The appeal, which has been attractively put by Mr Iqbal, is essentially founded on the proposition that the learned Immigration Judge's treatment of the evidence which led him to conclude that the sponsor had failed to prove that he had "sole responsibility" for the appellants was not made out.

The Facts

3. The basic facts of this case were that the sponsor entered the United Kingdom as a visitor in December 1995. He was an overstayer but obtained indefinite leave to remain in January 2012 by reason of long residence in excess of fourteen years. He returned to Bangladesh in 2012 for the first time since he left in 1995. On that visit he met his twin daughters for the first time and FA for the first time since she was 4 months old. Since 1995 the appellants had been brought up in Bangladesh by their mother with help from other family members. The burden was on the sponsor to show that he had "sole responsibility" for the appellants.

Determination

4. The learned Immigration Judge said this about the appeals:

"32. These appeals are wholly without merit. That is not meant as a criticism of KM, still less of the appellants themselves, but I find that there is no evidence whatsoever which could lead me to find that KM has had sole responsibility for the appellants at any time since 1995."

Analysis

5. It is not surprising that the learned Immigration Judge came to that conclusion. He asked KM how he said he had sole responsibility for the children and quotes KM's answer in paragraph 26 of the decision: "He said that their mother had had responsibility and that he had helped financially."
6. This answer alone sells the lie to KM's case because out of his own mouth he effectively said that it was not him but the mother who had responsibility for the appellants. Mr Iqbal sought to suggest, doing his best for his client, that KM may have misunderstood the meaning of "responsibility". We do not see how there could be any scope for

misunderstanding of such a simple concept, still less one which was central to the appeal before the learned Immigration Judge.

7. Mr Iqbal suggested that the learned Immigration Judge had not given appropriate factual scrutiny to the facts or taken full account of the guidance in TD (Yemen) [2006] UKAIT 00049. The importance about TD (Yemen) is that it shows that the concept of sole responsibility is not a fine forensic legal concept but one that is rather more practical and prosaic. As the court commented when discussing Nmaju v SSHD at paragraph 30:

“The Court of Appeal saw ‘sole responsibility’ as a practical (rather than exclusively legal) exercise of ‘control’ by the UK-based parent over the child’s upbringing and whether what is done by the carer is done ‘under the direction’ of that parent.”

8. It is plain beyond the peradventure that the learned Immigration Judge had the relevant test in mind because he said in paragraph 35 that:

“KM’s own evidence on this was clear. Since 1995 the appellants have been brought up by their mother and paternal grandmother with help from their two uncles.”

9. The judge went on to find that KM had sent money to them over the years and had maintained contact with the family and discussed such matters as their education and health with them but he did not accept his evidence that he had chosen the children’s schools or that he was the sole provider of finance to the family since there was evidence of financial help from the uncles.

10. The burden was at all material times on the sponsor to prove the case. It is not surprising that the learned Immigration Judge concluded in paragraph 37: “KM’s evidence taken as a whole falls far short of showing that he had sole, as opposed to shared, responsibility of for the appellants.” Mr Iqbal goes on to take issue with the next sentence in the legal decision, “this was clear when KM was unable to point to any major decision he had taken independently of other family members” and submits that this shows that the judge was not applying the right test. We disagree. Taken in context, this latter sentence was simply the judge reinforcing the fundamental finding by pointing out that the sponsor could not even point to any major decision of any sort at any time that he had taken independently of the other family members.

11. As was pointed out in the hearing, the finding in paragraph 38 of the decision really tells it all in this case:

“One feature of his evidence was telling, namely that the role of his wife and his own mother featured far less in his evidence than that of his own role or that of the two uncles. I find that the reality is that the appellants’ mother and grandmother have brought them up albeit with assistance from their father and uncles.”

12. In view of the 14 year absence of the sponsor from Bangladesh whilst these children were growing up the finding in paragraph 38 can hardly be described as anything other than unsurprising.
13. There was a separate point raised for which permission to appeal was granted, namely whether or not the Tribunal made an error in relation to its approach to the requirements of paragraph 297 of the Immigration Rules. We can find no such error. The learned Immigration Judge dealt with paragraph 297(i)(d) clearly and appropriately in paragraph 39 of the decision.
14. For these reasons, the appeal is dismissed.

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Mr Justice Haddon-Cave